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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BRICE GIANNELLI

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Appeal 2017-000160  
Application 12/912,064  
Technology Center 2600

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Before ST. JOHN COURTENAY III, THU A. DANG, and  
LARRY J. HUME, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–13, 15 and 16, which are all the claims remaining in the application. Claim 14 is cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

*The Invention*

Appellant's claimed invention relates to a “method for adapting display parameters of a display device on board a vehicle.” Spec. ¶ 1.

*Representative Claim*

1. A method for adapting display parameters of a display device on board a vehicle, the display parameters having default values for a rated operating context of the vehicle, the method comprising:

detecting a disturbed operating context of the vehicle caused by unwanted movement of a portion of the vehicle; and

automatically modifying a value of at least one display parameter of the display device responsive to said detecting the disturbed operating context, the at least one display parameter including a size of at least one touch-control area, and said

*automatically modifying increasing the size of the at least one touch-control area displayed on the display device responsive to said detecting the disturbed operating context.*

(Contested limitation emphasized).

*Rejections*

R1. Claims 1–3 and 6–10 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Feyereisen et al. (US 2010/0309222 A1, publ. Dec. 9, 2010) (hereinafter “Feyereisen”), Larson (US 2010/ 0109975 A1, publ. May 6, 2010), and Orbanes et al. (US 2002/0089541 A1, July 11, 2002) (hereinafter “Orbanes”).

R2. Claims 4, 5, 13, 15, and 16 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of

Feyereisen, Larson, Orbanes and Shore (US 2010/0265181 A1, publ. Oct. 21, 2010).

R3. Claims 11 and 12 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Feyereisen, Larson, Orbanes and Hyde et al. (US 2008/0128027 A1, publ. June 5, 2008) (hereinafter “Hyde”).

### *Grouping of Claims*

Based upon Appellant’s arguments, we decide the appeal of claims 1–3 and 6–10, rejected under rejection R1, on the basis of representative claim 1. We decide the appeal of claims 4, 5, 13, 15, and 16, rejected under rejection R2, *infra*. We address claims 11 and 12, rejected under rejection R3, but not argued separately, *infra*. To the extent Appellant has not advanced separate, substantive arguments for particular rejected claims or issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

### ANALYSIS

We have considered all of Appellant’s arguments and any evidence presented. We find Appellant’s arguments unpersuasive for the reasons discussed *infra*. We adopt as our own: (1) the findings and legal conclusions set forth by the Examiner in the Final Office Action (2–17) from which this appeal is taken, and (2) the findings, legal conclusions, and explanations set forth in the Answer in response to Appellant’s arguments (Ans. 15–18). We highlight and address specific findings and arguments for emphasis in our analysis below.

#### *Rejection R1 of Representative Claim 1 under § 103*

**Issues:** Under 35 U.S.C. § 103, did the Examiner err by finding the cited combination of Feyereisen, Larson, and Orbanes would have taught or

suggested the contested limitation: “*automatically modifying increasing the size of the at least one touch-control area displayed on the display device responsive to said detecting the disturbed operating context,*” within the meaning of representative claim 1?<sup>1</sup>

Further, did the Examiner err in combining the cited Feyereisen, Larson, and Orbanes references under rejection R1, and the cited Feyereisen, Larson, Orbanes and Shore references under rejection R2, because Orbanes and Shore are purportedly non-analogous art to the claimed invention (as argued by Appellant — App. Br. 12–15)?

Appellant contends “the applied references fail to disclose the claim element of increasing size of a touch-control area responsive to detecting a disturbed operating context on a vehicle.” (App. Br. 7).

Specifically, Appellant contends:

Whether a displayed image of an externally sensed object increases, as described in Feyereisen, however, has no relation to whether a size of a touch-control area increases.

Furthermore, whether the object displayed on the display element 100/200 is increased (or decreased) is described in Feyereisen as being based on a function of the distance the object is from the vehicle, *not* based on a disturbed operating context of the vehicle (caused by unwanted movement of a portion of the vehicle).

(App. Br. 9).

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<sup>1</sup> We give the contested claim limitations the broadest reasonable interpretation (BRI) consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). *See* Spec. 10: “Of course, this invention is not limited to the exemplary embodiment described above.”

Appellant additionally contends:

Orbanes' so-called "zooming features" are not related in any way to "*automatic*" implementation thereof, particularly since such zooming features are implemented for use *by a programmer in the context of a system for graphically interconnecting operators in a visual programming system*, in response to inputs *by the programmer* (and not based on inputs responsive to detection of a disturbed operating context of a vehicle) *during program development*.

(App. Br. 10).

Appellant further argues, *inter alia*:

As such, Orbanes does not provide a teaching or a suggestion of relating in any way the so-called zooming features to an input other than an input from a programmer during program development.

(App. Br. 11).

Our reviewing court guides that nonobviousness cannot be established by attacking the references individually, when the rejection is based upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The test for obviousness is not whether the claimed invention is expressly suggested in any one or all of the references, but whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined* teachings of those references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Moreover, "the question under 35 U.S.C. § 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made." *Merck & Co., Inc. v. Biocraft Labs., Inc.*, 874 F. 2d 804, 807 (Fed. Cir. 1989).

This reasoning is applicable here. Because Appellant’s arguments are generally directed to attacking each reference considered in isolation, and are not directed to the *combined* teachings and suggestions of the references, as applied by the Examiner (Ans. 15–17; Final Act. 2–4), on this record, we are not persuaded the Examiner erred.

We find Feyereisen’s description (§ 51) of increasing (or decreasing) the size of an object rendered on a display element in an aircraft cockpit (§ 49) teaches or at least suggests “*automatically modifying increasing the size of the at least one . . . area displayed on the display device responsive to said detecting the disturbed operating context,*” as recited in claim 1. (Ans. 16, Final Act. 2–3). We address *infra* the “*at least one touch-control area,*” also recited in the contested limitation of claim 1, as being taught or suggested by Orbanes (§ 31).

We find the Examiner’s broad but reasonable interpretation of the “disturbed operating context” (claim 1) is fully consistent with Appellant’s Specification (7, ll. 1–2): “As relates to an aircraft, a disturbed operating context is noted, **for example**, when the aircraft is passing through an area of **turbulence.**”) (emphasis added). *See also* Spec. 10, § 4: “the display device in particular **may be** on board different types of vehicles, and particularly an **automobile** or a **ship**, in which **operating conditions also may disturb the readability and use of the display device.**” (Emphasis added).

Therefore, we find Feyereisen’s teaching (§ 51) of rotating the rendered object, or changing its viewing angle to accommodate a pitch, roll, yaw, turn, climb, or descent (i.e., a “disturbance”) of the vehicle, teaches, or

at least suggests, the disputed limitation of “detecting the **disturbed operating context**,” as recited in claim 1. (Emphasis added).

The Examiner additionally cites Larson (¶ 37) to further buttress the obviousness of the limitation “detecting the disturbed operating context.” (Claim 1) (Final Act. 3). We agree with the Examiner’s finding that Larson’s near-to-eye (NTE) display which adjusts the displayed image to account for “vibrations in the aircraft **20** (e.g., turbulence),” teaches, or at least suggests, “detecting the **disturbed operating context**,” within the meaning of claim 1. (Final Act. 3, citing Larson ¶ 37) (emphasis added).

The Examiner cites Orbanes for the limited purpose of teaching that Feyereisen’s display device may be further modified to include a “touch” control area, with predictable results. (Final Act. 4). We agree with the Examiner’s findings:

Orbanes teaches a system for graphically interconnecting operators where his system **can be a touchscreen** with a **zooming option** [0252] **useable in an aircraft** [0031], where Orbanes also teaches the method of **zooming into a control area** for a mouse input device Fig. 3A [0087]. Therefore it is understood that Orbanes system **allows users to access a touchscreen controls** by allowing users to zoom into control areas. Orbanes was only relied upon to teach the method of zooming (modifying) the display area of a **touchscreen** so that users have easier access to controls (Fig. 3A mouse controls). (Ans. 17) (emphasis added).

We agree with the Examiner’s findings, because Orbanes’ “touch screen an[d] aircraft display” (¶ 31), “touchscreen” (¶ 89), and “touch screen inputs” and “zoom renderer” (¶ 252) evidence that it was known in the art for a display device to have a “touch” control area. Moreover, our reviewing court guides that “[c]ombining two embodiments disclosed



adjacent to each other in a prior art patent does not require a leap of inventiveness.” *Boston Scientific Scimed, Inc. v. Cordis Corp.*, 554 F.3d 982, 991 (Fed. Cir. 2009).

Accordingly, given the strength of the evidence cited by the Examiner (Final Act. 2–4), on this record, we are not persuaded the Examiner erred in finding the combination of Feyereisen, Larson, and Orbanes would have taught, or at least suggested, the contested limitation of claim 1.

*Combinability of the References under §103(a)*

Appellant additionally contends the Orbanes reference is not properly combinable with Feyereisen and Larson, because Orbanes is non-analogous art. (App. Br. 12).

The question of whether a prior art reference is “analogous” turns on a two-prong test: “(1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (citation and quotations omitted.). Our reviewing court further guides that “[a] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). The Supreme Court additionally guides that “familiar items may have obvious uses beyond their primary purposes.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 402 (2007).

Applying this reasoning to the facts presented here, we find Orbanes satisfies the first prong of the two-prong “analogous art” test articulated by the Court in *Klein*. Because Orbanes teaches an embodiment (§ 31) that is adapted to display graphical representations on a **touch screen**, and an **aircraft display**, we find Orbanes is in the same general field of endeavor as the claimed invention. (See Claim 1). Given this evidence, we find unpersuasive Appellant’s unsupported allegations that “[i]n particular, Orbanes is directed to a system for graphically interconnecting operators in a visual programming system, clearly not in the same field of endeavor as Appellant’s independent claims.” (App. Br. 13).

In the alternative, we find Orbanes satisfies the second prong of the *Klein* “analogous art” test, because we find it is “reasonably pertinent to the particular problem with which the inventor is involved.” *Klein*, 647 F.3d at 1348. In particular, we note Orbanes (§§ 31, 89, 252) teaches the use of a touchscreen, which we find is “at least one touch-control area,” within the meaning of claim 1, under a broad but reasonable interpretation.<sup>2</sup>

Therefore, based upon a preponderance of the evidence, on this record, we are not persuaded of error regarding the Examiner’s underlying factual findings, which we find support the Examiner’s legal conclusion of obviousness. Accordingly, we sustain the Examiner’s obviousness rejection R1 of representative independent claim 1, and rejection R1 of the associated

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<sup>2</sup> Because “applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

grouped claims 2, 3, and 6–10, which fall with claim 1. *See* Grouping of Claims, *supra*.

*Rejection R2 of claims 4, 5, 13, 15, and 16 under §103(a)*

Regarding the Examiner’s rejection R2 of claims 4, 5, 13, 15, and 16, Appellant argues the Shore reference is not properly combinable with Feyereisen, Larson and Orbanes, because Shore is non-analogous art to the claimed invention. (App. Br. 14). The Examiner responds that “Shore was relied upon to teach the method of enlarging icon/key controls and removing unwanted icon/key controls and not the method of predictive text.” (Ans. 18).

Although Appellant urges that “predicting icon selection on a touch screen of a portable device, as described in Shore, is not in the same field of endeavor as Appellant’s claimed invention” (App. Br. 15), we observe Appellant does not explain how Shore is non-analogous to any specific limitations recited in any of the claims rejected under rejection R2. Regarding the second prong of the analogous art test, Appellant also contends Shore “is not reasonably pertinent to any problem faced by the inventor of the present application and fails the second prong of the analogous art test.” (App. Br. 15).

However, our reviewing court guides: “[a] finding that two inventions were designed to resolve different problems . . . is insufficient to demonstrate that one invention teaches away from another.” *Nat’l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1339 (Fed. Cir. 2004). “In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls” in an obviousness analysis. *KSR International Co. v. Teleflex Inc.*, 550 U.S.

398, 419 (2007). It is not necessary for the prior art to serve the same purpose as that disclosed in Appellant's Specification in order to support the conclusion that the claimed subject matter would have been obvious. *See In re Lintner*, 458 F.2d 1013, 1016 (CCPA 1972).

Therefore, on this record, and based upon a preponderance of the evidence, we are not persuaded by Appellant's contentions that Shore is non-analogous to the claimed invention. Accordingly, we sustain the Examiner's rejection R2 of claims 4, 5, 13, 15, and 16 under § 103.

*Rejection R3 of claims 11 and 12 under §103(a)*

Because Appellant has not provided separate arguments with respect to rejection R3 of dependent claims 11 and 12 rejected, we sustain the Examiner's rejection of these claims under 35 U.S.C. § 103(a). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

*Reply Brief*

To the extent Appellant may advance new arguments in the Reply Brief not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief, or are not responsive to arguments raised in the Examiner's Answer, will not be considered except for good cause, which Appellant has not shown. *See* 37 C.F.R. § 41.41(b)(2).

DECISION

We affirm the Examiner's decision rejecting claims 1–13, 15, and 16 under § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED